

BEFORE

THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NOS. 2019-224-E AND 2019-225-E

NOVEMBER 2, 2020

IN RE: South Carolina Energy Freedom)
 Act (House Bill 3659) Proceeding Related)
 to S.C. Code Ann. Section 58-37-40 and)
 Integrated Resource Plans for)
 Duke Energy Carolinas, LLC)

AND)

South Carolina Energy Freedom Act)
 (House Bill 3659) Proceeding Related to)
 S.C. Code Ann. Section 58-37-40 and)
 Integrated Resource Plans for)
 Duke Energy Progress, LLC)

**JOINT PETITION FOR
RECONSIDERATION**

The South Carolina Office of Regulatory Staff (“ORS”) pursuant to S.C. Code § 58-27-2150 and 10 S.C. Code Ann. Regs. 103-825, 103-854, and applicable South Carolina law, submits this Petition for Rehearing jointly with, and on behalf of, Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, the South Carolina Solar Business Alliance, Inc., Vote Solar, Cherokee County Cogeneration Partners, LLC,¹ Nucor Steel – South Carolina,² and the Southern Environmental Law Center on behalf of the South Carolina Coastal Conservation League and the

¹ Cherokee County Cogeneration Partners, LLC has intervened only in Docket No. 2019-224-E and not Docket No. 2019-225-E.

² Nucor Steel – South Carolina (“Nucor”) filed a Petition to Intervene only in Docket No. 2019-225-E and not Docket No. 2019-224-E. Nucor filed its Petition to Intervene on October 27, 2020. As of November 2, 2020, the Commission has not yet ruled on Nucor’s Petition to Intervene.

Southern Alliance for Clean Energy (collectively referred to herein as “Joint Petitioners”) for reconsideration of Commission Order No. 2020-715 in the above-captioned matter, and in support thereof would respectfully show as follows:

BACKGROUND

1. On May 8, 2019, the South Carolina General Assembly amended the code of laws of South Carolina to enact the Energy Freedom Act, or Act 62. Under Act 62, both Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (collectively referred to herein as “Duke” or the “Companies”) must submit an integrated resource plan to the South Carolina Public Service Commission (“Commission”) once every three years.³ South Carolina Code Ann. § 58-37-40 requires that IRPs be filed once every three years, and that annual IRP updates be filed in the intervening years.⁴ Act 62 allows an opportunity for intervenors to conduct discovery and provide comments on the “reasonableness and prudence of the plan” and allows intervenors to raise “alternatives to the plan.”⁵ Act 62 further requires that, within 300 days of filing, the Commission issue a “final order approving, modifying, or denying the plan” filed by DEC.⁶

2. Pursuant to the requirements of Act 62, the Commission opened Docket Nos. 2019-224-E and 2019-225-E on June 13, 2020.

3. On September 2, 2020, both DEC and DEP filed their 2020 Integrated Resource Plans (“IRP”).

4. According to the Companies’ filings, while they believe the dockets should remain distinct, the Companies proposed that both DEC and DEP share a joint procedural schedule to

³ See S.C. Code Ann. § 58-37-40(A).

⁴ See S.C. Code Ann. § 58-37-40(A) and (D)(1).

⁵ See S.C. Code Ann. § 58-37-40(C)(1).

⁶ *Id.*

provide for efficient discovery, testimony filings and hearings. Counsel for the Companies also represented that the Companies intended to consult with intervenors in pursuit of proposing a procedural schedule in an effort to avoid timing conflicts and mitigate potential witness availability concerns.⁷

5. On September 21, 2020, Hearing Office David Butler issued Commission Order No. 2020-89-H, in which the Hearing Officer stated that he had been appointed to establish a procedural schedule in the Duke IRP dockets.⁸ In an effort to aid in discussion regarding the procedural schedule, Mr. Butler outlined a proposed schedule for consideration and comment based on the assumption that the Order due date will be June 28, 2020.⁹ Mr. Butler also requested any written responses or comments regarding his proposal by September 28, 2020.¹⁰

6. On September 28, 2020, counsel for the Companies filed a letter outlining a proposed procedural schedule in these dockets. Counsel for the Companies respectfully submitted that the following procedural schedule be adopted by the Commission:

- DEC/DEP Direct Testimony due November 13, 2020;
- ORS and Intervenor Direct Testimony due February 5, 2021;
- DEC/DEP Rebuttal Testimony due March 19, 2021;
- ORS and Intervenor Surrebuttal Testimony due April 16, 2021;
- Witness & Testimony Order and Witness Panels due April 19, 2021;
- Joint DEC/DEP Evidentiary Hearing May 3-7, 2021;¹¹
- Briefs and Proposed Orders due May 28, 2021; and

⁷ See DEC filing on September 1, 2020, in Docket No. 2019-224-E and DEP filing on September 1, 2020, in Docket No. 2019-225-E.

⁸ Commission Order No. 2020-89-H.

⁹ See *Id.*

¹⁰ *Id.*

¹¹ Counsel indicated that the hearing may continue the following week, if necessary.

- Final Order from Commission issued by June 28, 2021.

Counsel indicated in her letter that the Companies believe the schedule to provide adequate time for discovery between the parties and testimony development while considering the Commission's calendar, holidays and response times, as well as the statutory deadline for these dockets. Furthermore, counsel indicated that the proposed schedule is supported by the South Carolina Office of Regulatory Staff, the South Carolina Solar Business Alliance, Inc., Vote Solar and the Southern Environmental Law Center on behalf of the South Carolina Coastal Conservation League, the Southern Alliance for Clean Energy and Upstate Forever.

7. On October 21, 2020, the Commission issued Order No. 2020-715. According to Order No 2020-715, the Commission adopted the following procedural schedule:

- DEC/DEP Direct Testimony due November 13, 2020;
- ORS and Intervenor Direct Testimony due February 5, 2021;
- DEC/DEP Rebuttal Testimony due March 19, 2021;
- ORS and Intervenor Surrebuttal Testimony due by Noon on March 30, 2021;
- Witness & Testimony Order and Witness Panels (the latter only possible if hearing is nonvirtual) due by Noon on March 30, 2021;
- A hearing would begin at the Commission on April 5, 2021;
- Proposed Orders due on May 7, 2021; and
- Final Order due on June 28, 2021.

The Commission stated in Order No. 2020-715 that it believed this schedule allowed "a more reasonable time for the Commission to hold its hearing, to properly deliberate and to prepare its final order in these cases."¹²

¹² Commission Order No. 2020-715.

ARGUMENT

8. While ORS supports the Commission's effort to ensure this IRP schedule allows a reasonable amount of time for the Commission to hold the hearing, properly deliberate, and prepare its final orders in these cases, ORS respectfully requests that the Commission reconsider its schedule issued in Order No. 2020-715 for four specific reasons. First, this procedural schedule represents a stark departure from the procedural schedules in the Dominion Energy South Carolina, Inc. ("DESC") and Lockhart Power Company ("Lockhart") IRP proceedings, which have proved reasonable. For instance, in the DESC IRP hearing, the Commission scheduled more than one month between the filing of DESC rebuttal and ORS and Intervenor surrebuttal testimony.¹³ In the Lockhart IRP hearing, the Commission scheduled 22 days between the filing of Lockhart's rebuttal testimony and ORS and intervenor surrebuttal testimony. It is also worth noting that in each of those dockets, ORS and the intervenors reviewed the rebuttal testimony of just one entity; whereas, under the Commission's procedural schedule in the Duke IRPs, ORS and the intervenors were allotted half the time to review and respond to the rebuttal testimony of two separate and distinct entities.

Second, the brevity between the filing of Duke rebuttal and ORS and intervenor surrebuttal prevents the ORS and intervenors from conducting any discovery required as a result of the Companies' rebuttal testimony.¹⁴ This hardship is compounded by the fact that ORS and many of

¹³ Pursuant to Order No. 2020-85-H, upon request from an intervenor, the Commission granted an extension to the surrebuttal testimony due date. With the extension, the time between filing rebuttal and surrebuttal testimonies spanned 35 days.

¹⁴ S.C. Code Regs. § 103-833 states that "[t]he person upon whom the interrogatories have been served shall serve a copy of the answers and objections within the time period designated by the party of record submitting the interrogatories, but not less than 20 days after the service thereof, unless the time is extended by the Commission for good cause shown." Accordingly, because the current schedule only allows for 11 days during which to receive and review testimony, parties lack the required time to issue, review, respond to, and receive any necessary discovery.

the intervenors in these proceedings will be reviewing testimony and data of two separate and distinct utilities. Ultimately, this shortened period of review may result in severe prejudice to the parties and the Commission by limiting inter-party communication and potentially the analytical depth presented to the Commission at the hearing.

Third, the shortened time period between the date on which ORS and intervenor surrebuttal testimony is due and the scheduled Commission merits hearing decreases the likelihood that parties will be able to settle or stipulate to facts. The extremely short window between surrebuttal and the start of hearing also makes it difficult for parties to issue discovery on surrebuttal or effectively make prehearing motions sufficiently in advance of hearing as contemplated by the Commission's rules. Having at least 10 days between surrebuttal and the start of the evidentiary hearing comports with the Dominion IRP schedule, and the parties in these IRPs should have the same amount of time to review surrebuttal and prepare for hearing.

Finally, counsel for ORS understands that witnesses of various parties have conflicts with the procedural schedule proposed by the Commission.

9. As a result, ORS respectfully requests that the Commission reconsider its Order No. 2020-715 and adopt the procedural schedule proposed by the Companies on September 28, 2020, which was agreed upon by many of the parties in these dockets.

10. In the alternative, in an effort to mitigate the concerns raised by the Commission in its Order No. 2020-715, the ORS and other parties to this Petition respectfully propose an alternative schedule below:

- DEC/DEP Direct Testimony due November 13, 2020;
- ORS and Intervenor Direct Testimony due February 5, 2021;
- DEC/DEP Rebuttal Testimony due March 19, 2021;

- ORS and Intervenor Surrebuttal Testimony due by Noon on April 15, 2021;
- Witness & Testimony Order and Witness Panels (the latter only possible if hearing is nonvirtual) due by Noon on April 19, 2021;
- A hearing would begin at the Commission on April 26, 2021;
- Proposed Orders due on May 21, 2021; and
- Final Order due on June 28, 2021.¹⁵

The schedule above closely aligns with both the schedule proposed by Duke and the schedule adopted by the Commission. However, this schedule gives ORS and intervenors a reasonable amount of time to review Company rebuttal and allows those parties the ability to work out any necessary discovery issues while complying with the discovery timelines set forth by the Commission in its regulations. The schedule also allows a reasonable amount of time for the Commission to hold its hearing, properly deliberate, and prepare its final order in these cases.

CONCLUSION

11. For the aforementioned, ORS and Joint Petitioners jointly and respectfully request that the Commission either (1) adopt the procedural schedule proposed by the Companies on September 28, 2020; or (2) adopt the procedural schedule proposed in paragraph ten (10) above.

WHEREFORE, having set forth the proper grounds, ORS and Joint Petitioners jointly and respectfully request that the Commission issue an order: (a) granting this Petition for Reconsideration; (b) modifying the findings, conclusions and decisions in Order No. 2020-715 in accordance herewith; and (c) granting ORS and the Joint Petitioners such other and further relief as is just and proper.

¹⁵ For ease of reference, changes between the schedule above and the schedule adopted by the Commission in its Order No. 2020-715 are emphasized via highlight. Also, attached to this Joint Petition for Reconsideration is a chart detailing the schedule proposed by the Companies, the Commission Ordered Schedule, and the Alternate Proposal.

Respectfully submitted,

s/ Andrew M. Bateman

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This 2nd day of November 2020

	Companies' Proposed Schedule	Commission Ordered Schedule	ORS Proposed Alternate Schedule
DEC/DEP Direct Testimony	November 13, 2020	November 13, 2020	November 13, 2020
ORS and Intervenor Testimony	February 5, 2021	February 5, 2021	February 5, 2021
DEC/DEP Rebuttal Testimony	March 19, 2021	March 19, 2021	March 19, 2021
ORS and Intervenor Surrebuttal Testimony	April 16, 2021	March 30, 2021	April 15, 2021
Witness & Testimony Order and Witness Panels	April 19, 2021	March 30, 2019	April 19, 2021
Hearing	May 3, 2021	April 5, 2021	April 26, 2021
Proposed Orders	May 28, 2021	May 7, 2021	May 21, 2021
Final Order	June 28, 2021	June 28, 2021	June 28, 2021